



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,796	02/20/2004	Brian Barney	NHC0071-USA	7178
530 7590 11/20/2007 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER DIXON, ANNETTE FREDRICKA	
			ART UNIT 3771	PAPER NUMBER
			MAIL DATE 11/20/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/783,796

Applicant(s)

BARNEY ET AL.

Examiner

Annette F. Dixon

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-25,30-32,35 and 36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-25,30-32,35 and 36 is/are allowed.
- 6) ☒ Claim(s) 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s) :

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 3771

### DETAILED ACTION

1. This Office Action is in response to the amendment filed on October 26, 2007. Examiner acknowledges claims 17-25, 30-32, 35, and 36 are pending in this application, with claims 17, 18, 24, 25, 30, 31, and 35 having been currently amended, claims 1-16, 26-29, 33, and 34 having been cancelled.
2. The indication of allowable subject matter in claim 17 is withdrawn in view of newly discovered reference Young et al. (7,171,965). Rejections based on the newly cited reference follow. Accordingly, the finality of the rejection of the last Office Action is withdrawn. Finally, the amendment filed on October 26, 2007 has been entered.
3. Examiner apologizes for any inconvenience incurred by the Attorney and the Applicant to make this Office Action a non-final rejection. Examiner is more than willing to expedite prosecution by a personal or telephonic interview.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claim 17 is rejected under 35 U.S.C. 102(e) as being anticipated by Young et al. (7,171,965).

Art Unit: 3771

As to Claim 17, Young teaches a dry powder inhaler (20), comprising: a housing (22) having a mouthpiece (28) and a delivery passageway (represented by arrow 50, Figure 4) connected to the mouthpiece (28); a magazine (150) positioned within the housing (22) and including a plurality of reservoirs (160) for holding doses of dry powder, the magazine (150) being movable within the housing to sequentially position the reservoirs (160) within the delivery passage way (represented by arrow 50, Figure 4), the magazine (150) including a layer of moisture resistant, air-tight material (158) secured to an upper surface of the magazine (172) over the reservoirs (160); a cover (30) connected to the housing (22) and selectively movable to open and close access to the mouthpiece (28); a rake (88, Column 5, Lines 8-58) connected to the cover (30) and extending into the housing (22), the rake (88) being engageable with the magazine (150) so that upon movement of the cover (30) to open access to the mouthpiece (28), the rake (88) moves the magazine (150) and causes one of the reservoirs (160) to be positioned within the delivery passageway (represented by arrow 50, Figure 4); and a foil removal mechanism (the combination of 70 and 76) having a rotatable winding wheel (76) that peels the layer of moisture resistant, air tight material (158) from the upper surface of the magazine (172) as the magazine is moved. (Figure 10a).

***Allowable Subject Matter***

6. Claim 18-25, 30-32, 35 and 36 are allowed.

**Response to Arguments**

7. Applicant's arguments with respect to claim 17 have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Annette F. Dixon  
Examiner  
Art Unit 3771

  
PATRICIA BIANCO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

11/14/07